

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs February 14, 2006

**STATE OF TENNESSEE v. JAFFTON BENAY RICHARDSON**

**Appeal from the Criminal Court for Davidson County**  
**No. 2004-A-375     Seth Norman, Judge**

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**No. M2005-00942-CCA-R3-CD - Filed July 10, 2006**

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The defendant, Jaffton Benay Richardson, pleaded guilty to two counts of impersonating a licensed professional, one count of forgery, and one count of misdemeanor theft, for which he received an effective eight-year sentence. The manner of service of that sentence was left to the trial court's discretion, and after conducting a hearing, the court denied the defendant's request for alternative sentencing. The defendant now brings the instant appeal challenging that denial. We affirm the trial court's judgments.

**Tenn. R. App. P. 3; Judgments of the Criminal Court are Affirmed.**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which GARY R. WADE, P.J., and ROBERT W. WEDEMEYER, J., joined.

Trudy L. Bloodworth, Nashville, Tennessee, for the Appellant, Jaffton Benay Richardson.

Paul G. Summers, Attorney General & Reporter; David H. Findley, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and James Milam, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

At the defendant's plea submission hearing, the state introduced the summary of the evidence supporting the defendant's pleas:

Mr. Richardson was living and working here in Nashville, Davidson County in November of 2002 through June of 2003. That at that time Mr. Richardson was employed by Pre-Paid Legal Services and that he was not an attorney. And proof would show that in November, specifically between November 5<sup>th</sup> and 15<sup>th</sup> of 2002 he represented himself as being an attorney and was hired [by] a citizen named Martha B. Brown of Nashville, Tennessee to represent her in a matter that, a pending legal matter that she had. That Mr. Richardson thereafter gained some possession of

some credit card checks belonging to Ms. Brown and proceeded to forge eight of those checks totaling \$8,800 on Ms. Brown's account with MBNA America Credit Card Company.

Also that in June of 2003 Mr. Richardson represented himself as an attorney to Frederick Prather, another citizen of Nashville, Davidson County, and was hired by Mr. Prather to represent him in a General Sessions hearing here in Davidson County in which he was charged with assault. Mr. Richardson charged a fee and accepted payment from Mr. Prather in the amount of \$500 or less. Mr. Richardson did not appear in court for Mr. Prather as he had promised to do. Ended up asking someone else to do that who was an attorney and the person did do that.

After accepting the defendant's guilty pleas, the trial court conducted a sentencing hearing to determine whether the defendant was a suitable candidate for alternative sentencing. The defendant's victims, Ms. Martha Brown and Mr. Frederick Prather, testified, as well as Assistant Attorney General Jennifer Peacock, who was pursuing a civil suit against the defendant for the unauthorized practice of law, and the defendant and his wife, Tammy Richardson.

Ms. Brown testified that she was a close friend of Tammy Richardson and that Ms. Richardson introduced the defendant to Ms. Brown as an attorney. Ms. Brown hired the defendant to draft a will and handle a real estate matter for her. When she discovered some time later that someone had been forging checks from her credit card account, she sought the defendant's help in resolving her identity theft, unaware that the defendant was the culprit.

Mr. Prather testified that he and the defendant were parishioners at the same church where he also met the defendant through Ms. Richardson. The defendant represented Mr. Prather's wife in an automobile accident case and later agreed to represent Mr. Prather in a domestic case involving his wife. However, the defendant eventually told Mr. Prather that he would be unable to represent him due to a conflict and arranged for a licensed attorney to represent Mr. Prather at a court hearing.

Assistant Attorney General Jennifer Peacock of the Consumer Advocate Division testified that she received correspondence from the defendant while pursuing a civil suit against him for the unauthorized practice of law. In his letter, the defendant expressed remorse for his crimes, stated that he did not intend to defend himself against her allegations, and admitted that he had been charged with the same crime in several other Tennessee counties.

The defendant and his wife, Tammy Richardson, testified on the defendant's behalf. The defendant expressed remorse for committing the instant crimes and explained the evolution of his unlawful law practice. According to the defendant, he was an employee of Pre-Paid Legal Services who performed clerical duties and was later hired by attorney John Germanis as an assistant. The defendant represented one of Mr. Germanis's clients in a court hearing after unsuccessfully moving for a continuance on Mr. Germanis's behalf, and he later engaged in further

law practice when Mr. Germanis's clients complained to him that Mr. Germanis was not actively working on their cases. The defendant further testified that he stole checks from Ms. Brown and forged her signature on them to obtain funds to support the drug habit that he developed in response to his marital difficulties. He further explained that after he agreed to represent Mr. Prather, he arranged for Mr. Germanis to appear at Mr. Prather's hearing so that Mr. Prather would have lawful representation.

Tammy Richardson testified that the defendant was very remorseful for his actions and that he had been rehabilitated during his incarceration for the instant crimes.

In the instant appeal, the defendant asserts that the trial court improperly denied his alternative sentencing request without considering his presumption of favorable candidacy for alternative sentencing and without weighing the many factors favorable to granting an alternative sentence.

When there is a challenge to the manner of service of a sentence, it is the duty of this court to conduct a de novo review of the record with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. § 40-35-401(d) (2003). This presumption, however, is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances. *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). The burden of showing that the sentence is improper is upon the appellant, and in the event the record fails to demonstrate the required consideration by the trial court, review of the sentence is purely de novo. *Id.* If appellate review reflects the trial court properly considered all relevant factors and its findings of fact are adequately supported by the record, this court must affirm the sentence, "even if we would have preferred a different result." *State v. Fletcher*, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

In making its sentencing determination, the trial court, after determining the range of sentence and the specific sentence, then determines the propriety of sentencing alternatives by considering (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on the enhancement and mitigating factors; (6) any statements the defendant wishes to make in the defendant's behalf about sentencing; and (7) the potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-210(a), (b), 40-35-103(5) (2003); *State v. Holland*, 860 S.W.2d 53, 60 (Tenn. Crim. App. 1993).

A defendant who is an especially mitigated or standard offender convicted of a Class C, D, or E felony is presumed to be a favorable candidate for alternative sentencing options, "in the absence of evidence to the contrary." Tenn. Code Ann. § 40-35-102(6) (2003). Our sentencing law also provides that "convicted felons committing the most severe offenses, possessing criminal histories evincing a clear disregard for the laws and morals of society, and evincing failure of past efforts at rehabilitation, shall be given first priority regarding sentences involving incarceration."

*Id.* § 40-35-102(5). A defendant's presumption of favorable candidacy for alternative sentencing may be rebutted; not all offenders who enjoy the presumption receive an alternative sentence. Rather, sentencing issues are determined by the facts and circumstances presented in each case. *State v. Taylor*, 744 S.W.2d 919, 922 (Tenn. Crim. App. 1987).

As a persistent offender, the defendant in the present case did not enjoy the presumption of favorable candidacy for alternative sentencing. In this situation, the state had no burden to justify a sentence involving incarceration. *See, e.g., State v. Michael W. Dinkins*, No. E2001-01711-CCA-R3-CD, slip op. at 3 (Tenn. Crim. App., Knoxville, Apr. 26, 2002); *State v. Joshua L. Webster*, No. E1999-02203-CCA-R3-CD, slip op. at 3 (Tenn. Crim. App., Knoxville, Dec. 4, 2000); *see* Tenn. Code Ann. § 40-35-103(1) (2003). Thus, the burden of establishing suitability for alternative sentencing rested upon the defendant, and he has failed to demonstrate on appeal that he carried this burden below.

When considering the defendant's alternative sentencing request, the trial court considered the sentencing hearing testimony and the defendant's prior criminal record, which included convictions for theft, receiving stolen property, and defrauding an innkeeper. Notably, the defendant received probationary sentences for several of these offenses. Ultimately, the trial court denied the defendant's request for alternative sentencing after finding the defendant's hearing testimony incredible. Specifically, the trial court found that it "could put absolutely no credence in anything [the defendant] says. He's been scamming people ever since 1991 as far as I can figure it and it's time justice caught up with him."

We first note that the assessment of witness credibility is solely entrusted to the finder of fact, the trial court in the instant case. *See State v. Adkins*, 786 S.W.2d 642, 646 (Tenn. 1990). Furthermore, although a sentencing court may appropriately consider "the defendant's candor and credibility, or lack thereof, as indicators of his potential for rehabilitation" and, accordingly, as a basis for denying full probation, *see, e.g., State v. Michael K. Miller*, No. W2003-01621-CCA-R3-CD, slip op. at 3 (Tenn. Crim. App., Jackson, July 27, 2004), we have recognized that "absent other factors, untruthfulness to the court will not per se warrant a denial of all alternative sentencing," *see State v. Tammy Cheak Trent*, No. E2003-01726-CCA-R3-CD, slip op. at 9 (Tenn. Crim. App., Knoxville, Oct. 20, 2004).

Notwithstanding, we further note that the defendant's compelling criminal record and previous unsuccessful probationary sentences alone justify the trial court's order of confinement. The defendant's testimony reveals that he has properly assessed the gravity of his criminal activity. We can only hope that his intent to rehabilitate himself is genuine and long abiding.

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JAMES CURWOOD WITT, JR., JUDGE